SUPREME COURT, U.S.

AUG 21 1957

JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1957

No. 401

VICTOR MANUEL GIL,

Petitioner,

vs.

ALBERT DEL GUERCIO, as District Director of the Immigration and Naturalization Service at Los Angeles, California,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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VICTOR MANUEL GIL,

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ALBERT DEL GUERCIO, as District Director of the Immigration and Naturalization Service at Los Angeles, California,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Your petitioner, Victor Manuel Gil, respectfully prays for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit in order to review its judgment affirming a judgment of the United States District Court for the respondent in petitioner's action for Declaratory Judgment and Injunction against order of deportation.

Jurisdiction.

The decision of the Court of Appeals is unreported. A copy of same is contained in "Appendix A" attached to this Petition. A copy of the decisions of the administrative special inquiry officer and Board of Immigration

Appeals is attached to this Petition and contained in "Appendix B".

Jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Judgment of the Court of Appeals was entered on June 17, 1957; Petition for Rehearing was denied on July 22, 1957.

Questions Presented.

1. Whether the denial of voluntary departure to an admittedly deportable alien constitutes a denial of due process of law when the Immigration and Naturalization Service decision is predicated upon:

(a) Denial of effective assistance of counsel;

(b) Assumption of vitally material matter not of record.

2. Can one subordinate of the Attorney General offer voluntary departure, and another subordinate of the Attorney General deny same, when there are no change of circumstances, save and except the exercise of the fundamental right of all aliens to counsel?

Statutes and Regulations Involved.

Section 10 of the Administrative Procedure Act, 60 Stat. 243, 5 U. S. C. 1009; Immigration Act of 1952, Section 244(e), 66 Stat. 214, 8 U. S. C. 1254(e); 8 U. S. C. 1254(b)(2); and, Section 241(a)(2) of the 1952 Act, 8 U. S. C. 1251(a)(2), together with the applicable rules and regulations in 8 Code of Federal Regulations in force at time of petitioner's deportation hearing. The foregoing are set forth in "Appendix C", *infra*.

Statement of the Case.[1]

Petitioner, age 24, was born in and is a national of Mexico [R. 15], and has been a continuous resident of the United States, particularly the Los Angeles area, since November, 1953 [R. 5]. He was arrested by the Immigration service on January 26, 1955, charged with entering the United States without inspection,[2] which, at the deportation hearing, was admitted [Tr. 2]. He further admitted a prior illegal entry in October, 1953 when he was granted voluntary departure without a hearing.

Prior to commencement and during the deportation hearing, petitioner, through his counsel, applied for voluntary departure in accord with the regulations and law, *infra*.

During the administrative hearing, the Special Inquiry Officer asked petitioner the following:

> "Q. The record in your case shows that you were brought to this office on January 26, 1955, and *you refused to make a statement at that time.* Have you any comment to make on that? A. I had been *advised by my attorney not to sign or say anything until I saw him.*" (Emphasis supplied.) [Tr. 5.]

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[1]It was stipulated by counsel in the lower court that the original exhibits would be considered in their original form [R. 23]. Whenever "Tr. ....." is employed, it refers to the transcript of the immigration service deportation hearing, which was marked "Exhibit A" in the trial court.

[2]8 U. S. C. 1251, Act of 1952, 66 Stat. 204:

"(a) Any alien in the United States . . . shall, upon the order of the Attorney General, be deported who . . .

(1) . . .

(2) entered the United States without inspection . . ."

The decision of the Special Inquiry Officer on page 2, thereof, contains the following recital:

> "At the time of his last apprehension *he refused to make a statement or sign any papers on the advice of counsel. He was also offered the voluntary departure privilege at that time and refused it.* . . . Further, the respondent has shown no reason why he could not have accepted the privilege of voluntary departure offered him at the time of his last apprehension. . . ." (Emphasis added.)

It is self evident that the statement in the decision regarding refusal to talk or sign any statement is contrary to above direct quote of only testimony from the record. *There is absolutely nothing in the record to support the statement in the decision regarding a prior offer and refusal of voluntary departure.*

The decision, *supra*, acknowledged that petitioner had established statutory eligibility for voluntary departure but he was denied same and ordered deported. Petitioner's appeal to the Board of Immigration Appeals was dismissed since he had been in the United States for less than five years and had no right under the regulations to appeal from a denial of the discretionary relief.

Petitioner filed a complaint for declaratory judgment and injunction [R. 5-8], in the District Court which had jurisdiction under the provisions of the Administrative Procedure Act, 60 Stat. 243; 5 U. S. C. 1009. The trial court denied relief and its Judgment was based upon Findings and Conclusions unsupported by the record [R. 14-18].

The court below affirmed the Judgment of the trial court, *infra*. Petitioner contended below, and does here, that the officer's denial of voluntary departure was predi-

cated upon unreasonable, unsubstantial and unreliable evidence and was in direct violation of due process of law and the Fifth Amendment of the United States Constitution.

The court below held that the incompleteness or error in the officer's decision regarding petitioner's refusal to talk was not prejudicial because the refusal to grant the relief was not based thereon. Petitioner believes this to be error.

The court below in discussing the question of alleged offer and refusal of voluntary departure at time of apprehension, states on page 4 of its decision:

> "in our view, the recitals in question, whether regarded as unfounded in fact or as factually true but improperly critical of appellant for exercising his right to counsel, were not prejudicial. . . . ."

Thereafter the appellate court's decision concedes that the officer's statement may have been "ill-advised", and disregarded it as surplusage. In footnote No. 5, it states "We need not, and do not, decide whether this additional reason was, in fact, inappropriate."

A square and irreconcilable conflict exists between the lower court decision and the decisions of this court that the complete decision of the agency must be reviewed, not disregarded as "surplusage", in part, in determining abuse of discretion. By declining to determine whether the assumption of matter not of record was employed in arriving at decision, even though, "ill-advised", was evading a vital issue that should be decided to maintain uniformity and fairness.

The affirming lower court decision regarding the fact that if there were an offer of voluntary departure and

later refused when alien had counsel, amounts to a denial of effective right of alien to counsel, a right guaranteed by Congress and the regulations of the agency.

Reasons Why Certiorari Should Be Granted.

This is not a petition to correct a decision which your petitioner believes to be merely erroneous.

It is a petition for this court to spell out the procedure and make certain the practice of administrative discretion is uniformly and fairly granted.

It is a petition for this court to spell out whether an alien can be denied discretionary relief of voluntary departure because he retains an attorney.

It is a petition for this court to spell out whether matters not of record can be the basis for denial of voluntary departure and whether this court countenances the lower court's departure from the principles enunciated by this court to the effect that the entire administrative decision must be considered in determining whether alien had a fair hearing.

The Sixth Amendment to the United States Constitution provides for right of counsel in criminal matters and over the years this has grown to include immigration proceedings, theoretically civil in nature.

The 1952 Immigration Act, Section 1252(b)(2) provides that an alien shall have right of counsel of his choice at no cost to Government. Immigration regulation, 8 C. F. R. 244.14(b), not only provides likewise, but adds that alien must be informed of such right at the time he is served with warrant of arrest, *infra*.

Petitioner followed the right granted by Congress. Got a lawyer and followed his advice and refused to talk

or sign any papers unless his counsel was present. Result: Agency decision lambasted him because he secured counsel, even going to extent of erroneously stating the only testimony on the subject and doing so for the purpose of justifying his action. The lower court said this was not prejudicial.

There is absolutely nothing in the record of the deportation hearing that indicates that petitioner had been offered and refused voluntary departure at the time of his arrest. Yet, agency decision states this as a fact. The lower court said this was not prejudicial.

This court said in *Boyd v. United States,* 116 U. S. 616, 636,

> "Under our system of government there should be no way to subject the life and freedom of one individual to the 'unfettered' or, more particularly, the arbitrary power of another' ".

To attempt to force an alien to act without advice of counsel is like forcing one charged with a crime to trial before his counsel can adequately prepare his case. (*Cf. White v. Regan,* 324 U. S. 760.)

Petitioner submits that the lower court grievously erred in disregarding as "surplusage" matter which it termed "ill-advised". A hearing is judged by what was done, not by what it can be excused from doing or disregarding as surplusage, even though the latter may be "ill-advised". (*Sec v. Chevez,* 318 U. S. 80, 87, 93, 94.)

This court has frequently declared in immigration cases that the agency regulations are the due process guarantees. Here, they were flaunted, even to the extent of the assumption of vitally material matter to the decision which is not in the record of the deportation proceedings.

QUERY: When the Attorney General delegates the right to a subordinate to grant or refuse voluntary departure, can another subordinate do the opposite when there are no change of circumstances, save and except the exercise of right of counsel.

That was not only done in this case, but as shown above, the Special Inquiry Officer twisted facts to justify his "ill-advised" action.

There has been no expression by this Honorable Court on this troublesome and vexations problem. This petition presents a timely opportunity.

Conclusion.

The writ of certiorari should be granted.

Respectfully submitted,

HARRY WOLPIN,

Counsel for Petitioner.

JOHN P. TOBIN,

Of Counsel.

APPENDIX "A."

United States Court of Appeals for the Ninth Circuit.

Excerpt from Proceedings of Monday, June 17, 1957.

Before: LEMMON, BARNES and HAMLEY, Circuit Judges.

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT.

ORDERED that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the Clerk, and that a Judgment be filed and recorded in the minutes of the Court in accordance with the opinion rendered.

Opinion of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals for the Ninth Circuit.

Victor Manuel Gil, Appellant, vs. Albert Del Guercio, as District Director of the Immigration and Naturalization Service at Los Angeles, California, Appellee. No. 15,416, June 17, 1957.

Appeal from the United States District Court for the Southern District of California, Central Division.

Before: Lemmon, Barnes, and Hamley, Circuit Judges.

HAMLEY, Circuit Judge:

Victor Manuel Gil brought this action to have an order for his deportation declared void, and to enjoin such deportation. The question presented on appeal is whether under the circumstances of this case, appellant should have been accorded the privilege of voluntary departure in lieu of deportation.

Gil is a native and citizen of Mexico. He entered the United States illegally in the late summer of 1953. He was apprehended three or four months later. On November 21, 1953, he was granted the privilege of voluntary departure in lieu of deportation, and returned to Mexico.

About four days later, Gil again entered the United States illegally. He has been in continuous residence in this country since that time. He was arrested on a warrant issued on January 25, 1955, by the Immigration and Naturalization Service. Brought to the agency office on the following day, Gil declined to make a statement.

On February 24, 1955, a hearing was held before a special inquiry officer of the Immigration and Naturaliza-

tion Service. At this hearing, as well as prior thereto, Gil's attorney asked that appellant be permitted the privilege of voluntary departure in lieu of deportation.[1] When asked, at this hearing, why he had refused to make a statement following his arrest, Gil replied that he had been advised by his attorney not to sign or say anything until his attorney saw him.

The special inquiry officer rendered his decision on March 11, 1955. He held that appellant had established statutory eligibility for the discretionary relief of voluntary departure. In the exercise of his discretion, however, the officer determined that such relief ought not to be accorded. The application for voluntary departure was therefore denied. The officer further determined that appellant was subject to deportation under 8 U. S. C. A. §1251(a)(2), and so ordered.

Gil appealed to the Board of Immigration Appeals. In a decision rendered on February 23, 1956, the board sustained the decision of the special inquiry officer, and dismissed the appeal. In so ruling, the board concurred in the findings of the special inquiry officer on the question of deportability, and rejected a contention that 8 U. S. C. A. §1251(a)(2) is unconstitutional.

The board is not empowered to entertain an appeal from a decision of a special inquiry officer denying an application for voluntary departure, where the officer has found the alien statutorily eligible for such departure, and the alien has been in the United States for a period of less than five years.[2] The board therefore declined to review

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[1]Pursuant to 8 U. S. C. A. §1254(e).

[2]8 C. F. R. §242.61(f)(2) (1952) (now 8 C. F. R. §242.21(a) (Supp. 1956)).

this feature of the special inquiry officer's decision—the only feature of that decision which is here drawn into question.

In his complaint in this action, Gil alleges that the officer's decision denying the application for voluntary departure was "based upon unreasonable unsubstantial and unreliable evidence," and was entered "in direct violation of due process of law and the Fifth Amendment of the Constitution of the United States." The effect of the district court order under review is to reject these contentions.

In asking us to reverse this judgment, appellant argues that certain recitals contained in the decision of the special inquiry officer indicate that, in denying voluntary departure, such officer abused the discretion reposed in him, and, in effect, denied appellant the right to be represented by counsel.[3]

The first such recital is this: "At the time of his last apprehension he refused to make a statement or sign any papers on the advice of counsel." Appellant argues that this statement is incomplete or incorrect, in that it implies a categorical refusal, on advice of counsel, to talk or sign any papers. He states, and the record supports him in this, that he merely declined to make a statement or sign any papers until his attorney could be present.

This incompleteness or error in the questioned recital, however, could not be prejudicial unless the decision to deny the application for voluntary departure can be said

[3]The right to be represented by counsel in such proceedings is provided by statute and regulation. See 8 U. S. C. A. §1252(b); 8 C. F. R. §242.14(b) (1952) (now 8 C. F. R. §242.10 (Supp. 1956)).

to rest thereon. Examination of the decision provides no indication that voluntary departure was denied because, or partly because, Gil refused to make a statement or sign any papers. We therefore find no merit in this branch of appellant's argument.

The remaining recitals to which appellant draws our attention as indicating an abuse of discretion are to the effect that Gil was offered the privilege of voluntary departure at the time of his last arrest, and refused it. The context in which these recitals appear is important to our discussion, and is therefore shown in the margin.[4]

It is argued that there is nothing in the record to support the statement that Gil had been offered the privilege

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[4]The decision, with the questioned recital shown in italics, reads in part as follows:

> "At the time of his last apprehension he refused to make a statement or sign any papers on the advice of counsel. *He was also offered the voluntary departure privilege at that time and refused it.*
>
> "An alien who once was granted voluntary privilege and who again is found here illegally does not merit a second chance for such departure in the absence of strong extenuating circumstances (I. D. No. 352). There are no extenuating circumstances in this case, particularly as the respondent had every opportunity after having been granted a previous voluntary departure to apply for an immigrant visa and lawfully reenter the United States had he wished to do so. *Further, the respondent has shown no reason why he could not have accepted the privilege of voluntar departure offered him at the time of his apprehension.* The voluntary departure privilege is solely a matter of discretion and no alien can claim that privilege as a matter of right. Considering all of the factors in this case it is found that the respondent has resided in the United States for less than five years, that he has previously been granted the voluntary departure privilege in lieu of deportation, that there are no strong extenuating circumstances as to why he should be granted the voluntary departure privilege another time, and on the basis of the entire record his application in the present proceedings for voluntary departure in lieu of deportation will be denied as a matter of administrative discretion."

of voluntary departure after his last arrest, and had refused it. In the alternative, it is argued that if there was such an offer at that time, there is no reason why appellant's application for voluntary departure, made prior to and during the hearing before the officer, should not have been granted. In this connection, it is contended that the only change of circumstance between the time of the original offer (if one was made) and appellant's application was that an attorney had appeared on his behalf. It is urged that the denial of his application because of such a change of circumstance in effect penalized appellant for exercising his right to counsel.

In our review, the recitals in question, whether regarded as unfounded in fact or as factually true but improperly critical of appellant for exercising his right to counsel, were not prejudicial. The special inquiry officer, relying upon Matter of M., 4 I. & N. Dec. 626, held that an alien who once was granted the privilege of voluntary departure, and who again is found here illegally, does not merit a second chance, in the absence of strong extenuating circumstances. The officer then found that there were no extenuating circumstances in this case. He pointed out that after appellant had been permitted to depart voluntarily following his 1953 illegal entry, he could have applied for an immigration visa, but chose, instead, to reenter illegally.

This alone was a sufficient basis for holding that there were no extenuating circumstances, and fully supports the officer's exercise of discretion in denying the application for another voluntary departure.

This self-sufficient reason for the officer's decision is in no sense undermined by the fact that a further reason given for such action may have been ill-advised. If this

further stated reason is ill-advised, it may be disregarded as surplusage. It is only where the decision would have been different but for a reason found to be inappropriate that such impropriety is prejudicial. The decision, read as a whole, indicates to us that the same result would have been reached, whether or not the recitals under discussion had been included.[5]

Appellant points out that, in Matter of M., supra, the board stated: ". . . We wish to caution that what we say here is not to be taken as an invariable rule, but that in each case the decision ultimately must be predicated upon the merits or demerits of that case." 4, I. & D. Dec. at 627.

In our opinion, the decision of the special inquiry officer reveals that he did take into consideration the merits and demerits of this case.

Affirmed.

(Endorsed:) Opinion. Filed June 17, 1957.

Paul P. O'Brien, Clerk.

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[5]We need not, and do not, decide whether this additional reason was, in fact, inappropriate.

United States Court of Appeals for the Ninth Circuit.

Victor Manuel Gil, Appellant, vs. Albert Del Guercio, as District Director of the Immigration and Naturalization Service at Los Angeles, California, Appellee. No. 15416.

JUDGMENT.

Appeal from the United States District Court for the Southern District of California, Central Division.

This cause came on to be heard from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is affirmed.

(Endorsed) Judgment.

Filed and Entered: June 17, 1957.

PAUL P. O'BRIEN, Clerk.

United States Court of Appeals for the Ninth Circuit.

Excerpt from Proceedings of Monday, July 22, 1957.

Before: LEMMON, BARNES and HAMLEY, Circuit Judges.

ORDER DENYING PETITION FOR REHEARING.

On consideration thereof, and by direction of the Court, IT IS ORDERED that the petition of Appellant, filed July 13, 1957, and within time allowed therefor by rule of court for a rehearing of the above cause be, and hereby is denied.

APPENDIX "B."

1. Decision of Special Inquiry Officer.

UNITED STATES DEPARTMENT OF JUSTICE.
Immigration and Naturalization Service.

Mar. 11, 1955.

File No. A8 955 286—Los Angeles.

In re: Victor Manuel Gil-Pena, also known as Victor Manuel Gil-Diaz.

In Deportation Proceedings in Behalf of Respondent: Mr. John P. Tobin, 1120 Guaranty Building, 6331 Hollywood Boulevard, Hollywood 28, California.

Charges:

Warrant: I&N Act—Entered without inspection.
Lodged: None.

Application: Voluntary departure.

Detention Status: At large under $500 bond.

Warrant of Arrest Served: January 27, 1955.

Discussion: This record relates to a 22-year-old single male, a native and citizen of Mexico, who last entered the United States on or about November 25, 1953 near San Ysidro, California, without inspection by Immigration officials. Accordingly he is amenable to deportation under the Immigration and Nationality Act on the charge contained in the warrant of arrest.

The respondent has applied for voluntary departure in lieu of deportation at his own expense and may be considered for that discretionary privilege under Section 244(e) of the Immigration and Nationality Act.

The respondent has never been lawfully admitted into the United States for permanent residence or for any other

purpose. At the time of his last entry he intended to work and to remain indefinitely in the United States and he was not at that time in possession of a valid unexpired immigrant visa, a valid passport, or any other entry document with which to apply for admission into the United States.

The respondent has no dependents in the United States and no close relatives in this country, other than an uncle. He testified that he has approximately $150 in the bank in the name of this uncle and that he has an automobile, a 1950 Pontiac. He has no other property in the United States.

The respondent testifies that he has never been arrested or charged with a violation of law either in the United States or Mexico, other than immigration violation. He has presented a police clearance from the City of Los Angeles showing no criminal record with that police department. Additionally he has furnished two letters stating to the knowledge of the person signing the letters he has never been convicted of any crime involving moral turpitude and that he is a person of good character.

On the record it is considered that the respondent has established statutory eligibility for the discretionary relief requested.

However, the record in this case shows that the respondent had previously illegally entered the United States, and after having been in this country approximately three or four months he was apprehended and granted the voluntary departure privilege in lieu of deportation via San

Ysidro, California, on or about November 21, 1953. He remained in Mexico approximately four days and then unlawfully reentered the United States.

At the time of his last apprehension he refused to make a statement or sign any papers on the advice of counsel. He was also offered the voluntary departure privilege at that time and refused it.

An alien who once was granted voluntary privilege and who again is found here illegally does not merit a second chance for such departure in the absence of strong extenuating circumstances (I. D. No. 352). There are no extenuating circumstances in this case, particularly as the respondent had every opportunity after having been granted a previous voluntary departure to apply for an immigrant visa and lawfully reenter the United States had he wished to do so. Further, the respondent has shown no reason why he could not have accepted the privilege of voluntary departure offered him at the time of his apprehension. The voluntary departure privilege is solely a matter of discretion and no alien can claim that privilege as a matter of right. Considering all of the factors in this case it is found that the respondent has resided in the United States for less than five years, that he has previously been granted the voluntary departure privilege in lieu of deportation, that there are no strong extenuating circumstances as to why he should be granted the voluntary departure privilege another time, and on the basis of the entire record his application in the present proceedings for voluntary departure in lieu of deportation will be denied as a matter of administrative discretion.

The respondent has specified Mexico as the country for deportation.

Findings of Fact:

(1) The respondent is an alien, a native and citizen of Mexico;

(2) The respondent last entered the United States about November 25, 1953 near San Ysidro, California;

(3) The respondent entered the United States without inspection.

Conclusion of Law:

(1) Under Section 241(a)(2) of the Immigration and Nationality Act the respondent is subject to deportation on the ground that he entered the United States without inspection.

Order: It is ordered that the alien be deported from the United States in the manner provided by law on the charge contained in the warrant of arrest.

It Is Further Ordered that the application for voluntary departure be and the same is hereby denied.

JOHN B. BARTOS
John B. Bartos
Special Inquiry Officer.

JBB:cgr

2. Decision of Board of Immigration Appeals.

U. S. DEPARTMENT OF JUSTICE.
Board of Immigration Appeals.

Feb. 23, 1956

File: A-8955286—Los Angeles.

In re: Victor Manuel Gil-Pena or Victor Manuel Gil-Diaz.

In Deportation Proceedings in Behalf of Respondent: John P. Tobin, Esquire, 1120 Guaranty Building, 6331 Hollywood Boulevard, Hollywood 28, California.

Charges:

Warrant: Act of 1952—Entered without inspection.
Lodged: None.

Application: Voluntary departure.

Detention Status: Released on bond.

This case is before us on appeal ffom a decision of a special inquiry officer directing the respondent's deportation.

The respondent is a 23-year-old male, native and citizen of Mexico. Counsel took exception to the special inquiry officer's findings of fact that the respondent last entered the United States without inspection near San Ysidro, California about November 25, 1953 but he has given no explanation for his exceptions. The respondent admitted that he last entered about the date mentioned and that he was not inspected by an immigration officer at that time (p. 2). We concur in these findings of fact of the special inquiry officer.

In the notice of appeal, counsel asserted that Section 241(a)(2) of the Immigration and Nationality Act and former 8 CFR 242.61(f) were unconstitutional. No

brief or argument has been submitted to elaborate on these contentions. It is not within the province of this Board to pass upon the constitutionality of statutes enacted by Congress. Panitz et al. v. District of Columbia, 112 F. 2d 39 (CA DC 1940). We are convinced, however, that there is no constitutional infirmity in the statutory provision or regulation mentioned.

The remaining matter is whether voluntary departure should be granted to the respondent. He was granted voluntary departure on November 21, 1953 and his last entry occurred about four days later. He has been in the United States for a period of less than five years and former 8 CFR 242, 61(f)(2) (now 8 CFR 242.21(a)) specifically provides that no appeal shall lie to this Board, in such cases, from an order of a special inquiry officer denying an application for voluntary departure as a matter of discretion. Hence, we are not in a position to grant voluntary departure to the respondent on appeal even if we were inclined to do so.

Order: It is ordered that the appeal be and the same is hereby dismissed.

Chairman.

APPENDIX "C."

Statutes and Regulations.

Section 10 of the Administrative Procedure Act of 1946.

(3) "Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion.

"(a) Right of Review.—Any person suffering legal wrong because of any agency action are adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

(b) Form and Venue of Action.—The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

"(c) Reviewable Acts.—Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action.

"(e) Scope of Review.—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and

statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (a) compel agency action unlawfully withheld or unreasonably delayed; and (b) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial *de novo* by the reviewing court. In making the foregoing determinations the court shall review the whole proceeding or such portions thereof as may be cited by any party, and due accounts shall be taken of the rule of prejudicial error." 60 Stat. 243, 5 U. S. C. 1009.

Immigration & Naturalization Act of 1952—Section 244(e).

8 U.S.C. 1254(e), 66 Stat. 214.

". . . . . .

(e) The Attorney General may, in his discretion, permit any alien under deportation proceedings, other than an alien within the provisions of paragraphs (4)-(7), (11), (12), (14), (17) or (18) of Section 1251 (a) of this Title (and also any alien within the purview of such paragraphs if he is also within the provisions of paragraph (4) or (5) of subsection (a) of this section), to

depart voluntarily from the United States at his own expense in lieu of deportation if such alien shall establish to the satisfaction of the Attorney General that he is, and has been, a person of good moral character for at least five years immediately preceding his application for voluntary departure under this section."

8 U.S.C.A. 1252(b)(2):

"The alien shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose;—."

8 C.F.R. 244.11:

"The alien, if he believes that he is eligible for voluntary departure under section 244(e) of the act, may, at any time subsequent to the issuance of a warrant of arrest and prior to the commencement of the hearing, apply therefor. . . ."

8 C.F.R. 244.14(b):

"Upon service of the warrant of arrest, the alien shall be advised of his right to representation by counsel, at no expense to the Government, at the hearing to be held under the warrant of arrest. . . ."

8 C.F.R. 242.53:

(a) . . .

(b) The special inquiry officer shall conduct a fair and impartial hearing. No decision of deportability shall be valid unless based upon, reasonable, substantial and probative evidence. . . .

(c) Special inquiry officers; specify duties. . . . 5. present the evidence . . . as to (I) . . . (IV) factors bearing upon the respondent's eligibility for discretionary relief if application therefor has been made (V). . . . ."

8 C.F.R. 242.54:

"(d) Except in the case of an alien who is prima facie deportable under section 242(f) of the act, at any time during the hearing the respondent may apply for suspension of deportation on Form I-256A, for voluntary departure under section 244 of the act, or for both voluntary departure and pre-examination."